

Nathan, A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 AMERICAN BROADCASTING COMPANIES, INC.,
 DISNEY ENTERPRISES, INC., CBS BROADCASTING
 INC., CBS STUDIOS INC., NBCUNIVERSAL MEDIA,
 LLC, NBC STUDIOS, LLC, UNIVERSAL NETWORK
 TELEVISION, LLC, TELEMUNDO NETWORK GROUP
 LLC, WNJU-TV BROADCASTING LLC,

Plaintiffs,

v.

AEREO, INC.,

Defendant.

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12 Civ. 1540 (AJN)
[consolidated]

AT~

[PROPOSED] STIPULATED CONSENT JUDGMENT
AND PERMANENT INJUNCTION

WHEREAS, on March 1, 2012, Plaintiffs American Broadcasting Companies, Inc., Disney Enterprises, Inc., CBS Broadcasting Inc., CBS Studios Inc., NBCUniversal Media, LLC, NBC Studios, LLC, Universal Network Television, LLC, Telemundo Network Group LLC, and WNJU-TV Broadcasting LLC (the “ABC Plaintiffs”) commenced the above-captioned action asserting claims of copyright infringement against Defendant Aereo, Inc. (“Aereo”) arising from Aereo’s operation of the service offered over the Internet through Aereo’s website, www.aereo.com, beginning February 14, 2012; and

WHEREAS, on March 1, 2012, Plaintiffs WNET, THIRTEEN, Fox Television Stations, Inc., Twentieth Century Fox Film Corporation, WPIX, LLC, Univision Television Group, Inc., The Univision Network Limited Partnership, Public Broadcasting Service (the “WNET Plaintiffs”) (the WNET Plaintiffs, collectively with the ABC Plaintiffs, the “Plaintiffs”)

commenced an action, 12-cv-1543, against Aereo asserting claims of copyright infringement based on the same operative facts; and

WHEREAS, by order dated December 17, 2012 [Dkt. 124], 12-cv-1540 and 12-cv-1543 were consolidated with 12-cv-1540 designated as the Lead Case; and

WHEREAS, on October 17, 2013, the ABC Plaintiffs filed an Amended Complaint; and

WHEREAS, Aereo answered the ABC Plaintiffs' and the WNET Plaintiffs' complaints and the ABC Plaintiffs' Amended Complaint and asserted defenses, as well as counterclaims seeking a declaration of non-infringement;

WHEREAS, on April 22, 2014, the United States Supreme Court held in American Broad. Cos., Inc. v. Aereo, Inc., 134 S. Ct. 2498, 2511 (2014), that Aereo “‘perform[s]’ [Plaintiffs’] copyrighted works ‘publicly,’” in violation of Plaintiffs’ public performance rights set forth in Section 106(4) of the United States Copyright Act, 17 U.S.C. § 106(4); and

WHEREAS, on October 23, 2014, the Court, on remand for further proceedings consistent with the Supreme Court’s opinion, entered a preliminary injunction in favor of Plaintiffs [Dkt. No. 342] (“Preliminary Injunction”);

WHEREAS, Aereo filed a case under chapter 11 of title 11 of the United States Code on November 20, 2014 in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), which case is docketed as In re Aereo, Inc., 14-13200 (SHL) (the “Bankruptcy Case”); and

WHEREAS, Plaintiffs and Aereo (the “Parties”) have reached agreement for resolution of this action and all disputes of all types among them, the full terms and conditions of which are set forth in the document entitled “Settlement Agreement,” dated as of April 17, 2015, and the First Amended Plan of Reorganization dated as of April 17, 2015 (the “Bankruptcy Plan,” and

collectively with the Settlement Agreement, the “Settlement”) and have agreed, as one aspect of the agreements embodied therein, to the entry by the Court of a stipulated consent judgment and permanent injunction and the continuing jurisdiction of the Court on the terms and conditions, and to the extent, set forth herein and therein;

THEREFORE, the Parties stipulate and agree that this Court has jurisdiction to enter a stipulated consent judgment and permanent injunction on the following terms and conditions and that the Court shall have continuing jurisdiction solely for purposes of enforcing the stipulated consent judgment and permanent injunction, and request that the Court enter the attached [Proposed] Stipulated Consent Judgment and Permanent Injunction (“Stipulated Consent Judgment and Permanent Injunction”).

IT IS SO STIPULATED.

Respectfully submitted,

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

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Pursuant to a Settlement reached between Plaintiffs and Aereo, the foregoing stipulation of the Parties, and for good cause shown, the Court hereby enters the following Stipulated Consent Judgment and Permanent Injunction:

STIPULATED CONSENT JUDGMENT AND PERMANENT INJUNCTION

1. For purposes of this Stipulated Consent Judgment and Permanent Injunction, the following definitions shall apply:

- a. "Plaintiffs" shall mean Plaintiffs WNET, THIRTEEN, Fox Television Stations, Inc., Twentieth Century Fox Film Corporation, WPIX, LLC, Univision Television Group, Inc., The Univision Network Limited Partnership, Public Broadcasting Service, American Broadcasting Companies, Inc., Disney Enterprises, Inc., CBS Broadcasting Inc., CBS Studios Inc., NBCUniversal Media, LLC, NBC Studios, LLC, Universal Network Television, LLC, Telemundo Network Group LLC, and WNJU-TV Broadcasting LLC.
- b. "Defendant" shall mean Defendant Aereo, Inc. (formerly known as Bamboom Labs, Inc.), which is a debtor-in-possession in the Bankruptcy Case , and which shall be dissolved pursuant to the terms of the Bankruptcy Plan.
- c. "Copyrighted Programming" shall mean each of those audiovisual works, or portions thereof, whether now in existence or later created, including but not limited to original programming, motion pictures and newscasts, in which the Plaintiffs, or any of them, owns or controls an exclusive right under the United States Copyright Act, 17 U.S.C. §§ 101 et seq.

2. Defendant is PERMANENTLY RESTRAINED AND ENJOINED from (i) streaming, transmitting, retransmitting, performing, distributing, exhibiting, displaying or otherwise making available to the public, without the prior written consent of the copyright owner, any Copyrighted Programming, simultaneously or non-simultaneously with the over-the-air broadcast thereof, through any device or process, including, without limitation, over the Internet through websites such as aereo.com, via mobile devices, or otherwise, or (ii) engaging in any other activity that infringes, whether directly or indirectly, any Plaintiff's exclusive rights in

any Copyrighted Programming under Section 106(1)-(5) of the Copyright Act, 17 U.S.C. §§ 101 et seq.

3. The Permanent Injunction replaces the Preliminary Injunction.

4. Violation of this Stipulated Consent Judgment and Permanent Injunction shall be subject to all applicable penalties, including contempt of Court.

5. Plaintiffs shall be awarded damages for Defendant's infringement in the amount of \$10,000 per work as set forth in their allowed proofs of claims filed in the Bankruptcy Case and listed in Exhibit A hereto, with such damages to be paid and collected in accordance with the Settlement.

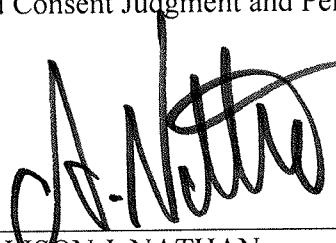
6. All claims, counterclaims and defenses in this action are hereby resolved by this Stipulated Consent Judgment and Permanent Injunction.

7. All Parties shall bear their own costs.

8. This Court shall retain continuing jurisdiction over the Parties and the action solely for purposes of enforcing this Stipulated Consent Judgment and Permanent Injunction.

IT IS SO ORDERED.

Dated: May 11, 2015



ALISON J. NATHAN
United States District Court Judge

Exhibit A**Broadcasters' Claims**

Claim Number	Creditor Name	Claim Value
72	American Broadcasting Companies, Inc.	\$17,710,000.00
41	CBS Broadcasting Inc.	\$13,320,000.00
42	CBS Studios Inc.	\$14,560,000.00
70	Disney Enterprises, Inc.	\$9,290,000.00
44	Fox Television Stations Inc.; Twentieth Century Fox Film Corporation	\$26,040,000.00
61	NBCUniversal Media, LLC	\$20,000.00
48	Open 4 Business Productions LLC	\$3,670,000.00
66	Public Broadcasting Service	\$210,000.00
50	Telemundo Network Group LLC	\$50,000.00
47	The Univision Network Limited Partnership; Univision Television Group, Inc.	\$420,000.00
49	Universal Network Television LLC	\$950,000.00
63	Universal Television LLC f/k/a NBC Studios LLC	\$11,620,000.00
55	WLIW LLC	\$170,000.00
64	WNET and Thirteen Productions LLC	\$640,000.00
60	WNJU-TV Broadcasting LLC	\$40,000.00
58	WPIX, LLC (formerly WPIX, Inc.)	\$60,000.00